

CHAPTER 4-10.6 CORN INDUSTRY PROMOTION

4-10.6-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Commissioner" means the agriculture commissioner or the commissioner's designated representative.
2. "Corn" means all varieties of corn marketed in the state except sweet corn or popcorn.
3. "Council" means the North Dakota corn utilization council.
4. "Designated handler" means any grain warehouse, licensed grain buyer, processing plant, or ethanol plant which purchases corn from a grower and any person having a claim against the grower, when the actual or constructive possession of the corn is taken as security, part payment, or in satisfaction of a mortgage, pledge, lien, or claim.
5. "Grower" means a person who plants, raises, and harvests corn.
6. "Marketed in this state" means the sale of corn to a designated handler residing in or doing business in this state and actual delivery of the corn in this state.
7. "Participating grower" means a grower who has paid the assessment on corn production under this chapter and who has not applied for a refund of the assessment.
8. "Voting grower" means a grower who has paid the assessment under this chapter, whether or not the grower has applied for a refund.

4-10.6-02. North Dakota corn utilization council - Members - Election - Term. The North Dakota corn utilization council must be composed of one member elected from each district established by section 4-10.6-03. The chairman of the council must be a member of the council elected by a majority vote of the council. Each member must be a resident of and participating grower in the district the member represents. The term of each member is four years, beginning on April first of the year of election, except that initially three members must be elected for four-year terms; two members must be elected for three-year terms; and two members must be elected for two-year terms as designated by the commissioner. If at any time during a member's term the member ceases to possess any of the qualifications required by this chapter, the member's office is deemed vacant and the council shall appoint a qualified participating grower from any district to complete the term of office. The council shall administer all elections and may request the assistance of the commissioner. Elections must be conducted no later than April first of each year. Before the expiration of a member's term, the council shall appoint a nominating committee made up of participating growers who reside in the member's district. The committee shall nominate a resident participating grower as a candidate for the office. Additional candidates may be nominated by a written petition of five growers from the district. No council member may serve more than two consecutive four-year terms. When a member's office is vacant, the council, before beginning the nominating process, shall notify growers of the vacancy and pending election by letter or by publishing a conspicuous notice of the vacancy, in the official newspaper of every county in the district.

4-10.6-03. Corn districts. The following corn districts are established:

1. District one consists of Richland County.
2. District two consists of Cass, Traill, and Steele Counties.

3. District three consists of Benson, Burke, Bottineau, Cavalier, Divide, Grand Forks, McHenry, Mountrail, Nelson, Pembina, Pierce, Ramsey, Renville, Rolette, Towner, Walsh, Ward, and Williams Counties.
4. District four consists of Barnes, Eddy, Foster, Griggs, and Stutsman Counties.
5. District five consists of Sargent and Ransom Counties.
6. District six consists of Dickey and LaMoure Counties.
7. District seven consists of all remaining counties in this state where corn is grown.

4-10.6-04. Meetings - Compensation and expenses of council. The chairman shall call all meetings of the council. The chairman shall call special meetings on the petition of three council members, within seven days of receiving the petition. The council shall determine the amount of compensation payable to each council member. The amount payable may not exceed seventy-five dollars per day plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council, except that no compensation under this section may be paid to any member who receives compensation or salary as a regular state employee or official.

4-10.6-05. Expenditure of funds. The council or its designated agent shall approve every expenditure of funds made pursuant to this chapter and submit the approved expenditure upon an itemized voucher to the office of management and budget for approval.

4-10.6-06. Council authority. In the administration of this chapter, the council may:

1. Contract and cooperate with any person for market maintenance and expansion, utilization research, transportation, and education.
2. Expend the funds collected pursuant to this chapter and appropriated for its administration.
3. Appoint, employ, bond, discharge, fix compensation for, and prescribe the duties of personnel.
4. Accept donations of funds, property, services, or other assistance from any source for the purpose of furthering the objectives of the council.
5. Investigate and prosecute in the name of the state any action or suit to enforce the collection or ensure payment of the assessments authorized by this chapter, and to sue and be sued in the name of the council.
6. Provide educational and informational materials.

4-10.6-07. Certification of designated handlers. A designated handler shall file with the council a form containing the name under which the designated handler is transacting business within the state, the designated handler's places of business, the location of loading and shipping places of the designated handler's agents, if a partnership, the names and addresses of the persons constituting the firm partnership, if a corporation, the corporate name and the names and addresses of the principal officers and agents in this state, and, if a limited liability company, the limited liability company name and the names and addresses of the principal managers and agents within this state. The council shall issue a certificate to the designated handler. A designated handler may not sell, process, or ship any corn until it has a certificate as required by this section.

4-10.6-08. Assessment. Effective July 1, 1991, an assessment at the rate of one-quarter of one percent of the value of a bushel must be levied and imposed upon all corn

marketed in this state, until a national corn checkoff is implemented. This assessment is due upon any identifiable lot or quantity of corn.

4-10.6-09. Collection of assessment. Every designated handler shall collect the assessment from the seller by deducting the assessment from the purchase price of all corn subject to the assessment and purchased by the designated handler. If a grower sells corn to a person who is not a designated handler, the grower shall forward the assessment to the council at the time and in the manner prescribed by the council.

4-10.6-10. Records by designated handlers - Continuing appropriation. Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of corn which may be examined by the council at all reasonable times. Every designated handler shall report to the council, in a manner and at a time prescribed by the council. The assessments collected by the designated handler must accompany the report. All moneys levied and collected under this chapter must be paid within thirty days of the end of each quarterly period to the council for deposit in the state treasury to the credit of a special revolving account designated as the corn fund. All money in the corn fund is appropriated on a continuing basis to the council to be used exclusively to carry out this chapter. Quarterly periods end on March thirty-first, June thirtieth, September thirtieth, and December thirty-first of each year. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.

4-10.6-11. Nonparticipating growers - Refunds. The council shall develop and disseminate information and instructions relating to the purpose of the corn assessment and manner in which refunds may be claimed, and shall cooperate with governmental agencies and private businesses engaged in the purchase of corn. Any grower subject to the assessment provided by this chapter, within ninety days following an assessment or final settlement, may apply to the council for a refund application. If the refund application is properly executed by the grower, returned within ninety days of the date it was mailed to the grower, and accompanied by a record of the assessment by the designated handler, the grower must be refunded the net amount of the assessment collected. If no request for refund is made within the period prescribed above, the grower is presumed to have agreed to the assessment. However, if a grower pays the assessment on the same corn more than once, the grower is entitled to a refund upon furnishing the council with proof of the overpayment.

4-10.6-12. Advisory referendum by voting growers. Whenever fifteen percent of the voting growers petition the council, the council shall conduct an advisory referendum to determine whether the assessment imposed by this chapter should be changed. The referendum may be conducted only among voting growers who have paid all assessments pursuant to this chapter for the preceding year. The ballots must be prepared by the council and available at each county extension office for a vote on a date set by the council. Each ballot must be accompanied by a notice stating the date and place where the council will open and tabulate the ballots and stating that any voting grower may be present. Voting growers who reside outside the state or voting growers within the state who expect to be absent from their county on the day of the vote may request an absentee ballot. The council shall provide to any voting grower an absentee ballot upon request beginning thirty days prior to the vote. A voting grower requesting an absentee ballot shall file a statement with the council affirming the grower's eligibility to vote. The council shall provide a statement form upon request. All absentee ballots and statements must be received by the council at least two working days prior to a vote. If a majority of the voting growers vote for the proposed change, the council shall certify the result to the commissioner and request that the commissioner prepare appropriate proposed legislation for submission to the next legislative assembly.

4-10.6-13. Collection of unpaid assessment. If a designated handler fails to pay the assessment provided by this chapter, the council may enforce collection in any appropriate court within this state.

4-10.6-14. Penalty for nonpayment of assessment. A designated handler who fails to pay the assessment provided by this chapter on the date the assessment becomes due is

delinquent. The council may levy a penalty on that designated handler in the amount of ten percent of the assessment due, plus interest at the rate of twelve percent per annum from the due date. The penalty and interest must be collected in the manner prescribed by this chapter.

4-10.6-15. Records of council - Inspection. All records of the council must be available for inspection at the council office during regular business hours.

4-10.6-16. Penalty. Any person who willfully violates this chapter is guilty of a class B misdemeanor.